

EUROPEAN REGULATORY PRIVATE LAW

In September 2011, Professor Hans-W. Micklitz launched a 5-year project entitled 'European Regulatory Private Law: The Transformation of European Private Law from Autonomy to Functionalism in Competition and Regulation' (ERC-ERPL) at the Law Department of the EUI. Recognised as research of scientific excellence, the socio-legal project is funded by a 2.1 million EUR 'European Research Council Advanced' grant.

Together with the project team Prof. Micklitz is looking into a normative model, which would shape a self-sufficient European private legal order in its interaction with the law systems of the different Member States.

"The European Parliament initiated a debate in the 1990s, after the Member States agreed on the big enlargement of the EU [resulting in 10 new Member States joining in 2004, further two in 2007]. The Parliament majority was thinking in nation state building categories; it wanted to have a constitution and a European civil code. That means that all parties doing business, working, buying products etc would be governed by more or less the same rules."

"What happened to the idea of a European constitution happened to the European civil code: the project failed," Head of the Law Department Prof. Micklitz says. Despite this, the EU has been actively implementing regulation, which blurs the boundaries between national private law and European law, in particular in the field of telecommunication, postal services, energy, transport, financial services, consumer law and internet regulation.

There have been "hundreds of EU-made rules with the idea of establishing or organising the internal

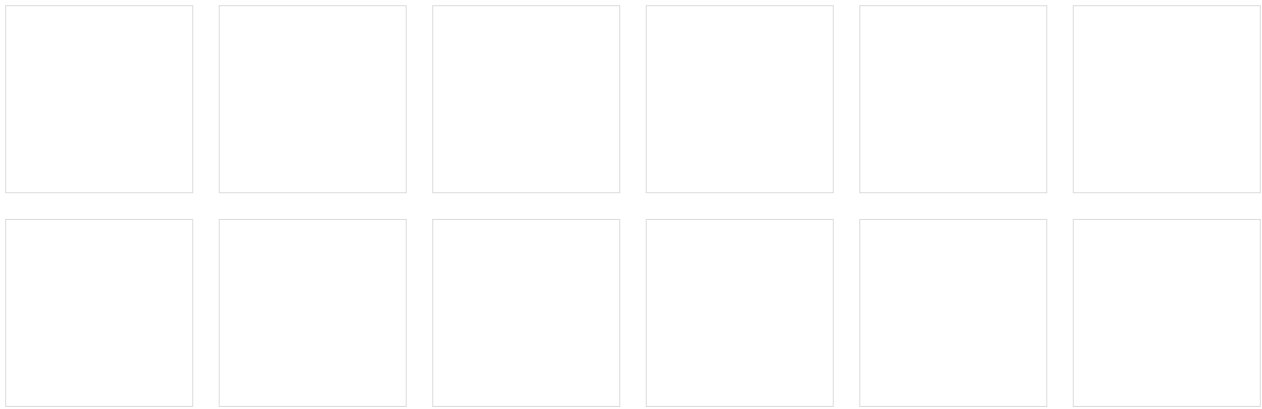
"What happened to the idea of a European constitution happened to the European civil code: the project failed."

market," Prof. Micklitz says. Former state monopolies such as telecoms and postal services have been liberalised through EU legislation, he explains, in order to build up a common market, but their interactions and transactions with other market participants are largely governed by EU rules and procedures.

"You have 28 countries with nearly 500 million people; all this should be regarded as one market despite the differences in languages and legal history," he says. "What the EU did was to set into motion a huge machinery that would ensure that such markets operate under similar standards."

"We are talking about a level of complexity that is hard to imagine," Micklitz says. "If you put together a couple of pieces of the highest level of EU financial law that are trying to explain the rules, you easily end up with 500 pages of law."





“You have 28 countries with nearly 500 million people; all this should be regarded as one market despite the differences in languages and legal history”

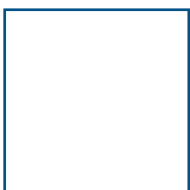
“At the same time, member states still place faith in and emphasise their own national private law system; the French are still relying on the *code civil*, the Germans on the civil code, the English on the common law system, etc, but in reality – and this is the insight that animates the project – the EU is gradually establishing rules and institutions which are self-standing”, says Prof. Micklitz. The generous funding through the ERC allows for flexibility and autonomy in the performance of the project.

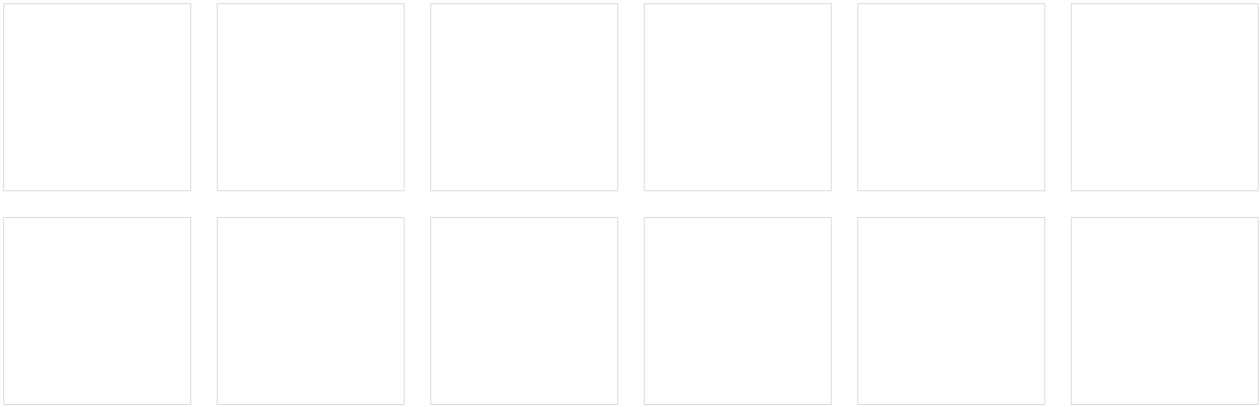
A team of researchers is involved in the execution of the project. The first two years were devoted to the deepening and clarification of conceptual questions. What is autonomy? What does regulation mean? What drives the transformation of the state, the market or the economy and how does this affect private law regimes? These big questions are then elaborated and tested in sub-projects executed by the project team. Yane Svetiev, former Max Weber fellow and post-doc, is focusing on the study of regulated markets in particular the role and function

of national and European agencies in the regulation of private law. Post-doctorate Guido Comparato focuses on autonomy in private law and on the problem of social inclusion and social exclusion. Andrea Wechsler, Max Weber Fellow, contributes via her research on the transformation of enforcement in the EU. Barend van Leeuwen, PhD researcher, looks into standardization of services as a new form of contract law making and enforcement, PhD researcher Betül Kas investigates the hybrid character of remedies in cases where European citizens seek protection from discrimination, environmental harm or abusive market conduct. Marta Cantero, PhD researcher, conducts her research in the area of telecommunications services and Lucila de Almeida in the area of energy. Both study the transformation of private law in these two regulated markets, while PhD researcher Rónán Condon does research on network liability and Federico della Negra on the increasing role of the European Court of Justice in the interpretation of European consumer law rules.

Project assistant Beate Hintzen acts as interface between the academic needs of the project, the requirements of the ERC grant authority and the stipulations of the EUI administration. She is in charge of the dissemination of the ERPL project and the increase of its visibility, such as through the creation of the [ERPL project blog](#) as well as the newly launched [monitoring service](#) on EU developments in the area of European private law. Everybody who is interested in the subject can subscribe [here](#).

The ERC-ERPL project must go beyond the letter of the law and examine how EU law is used in practice. “The written law might say, “These EU laws do not



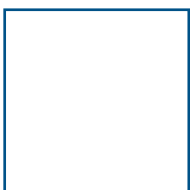


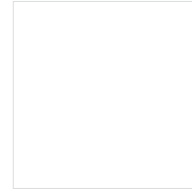
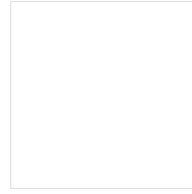
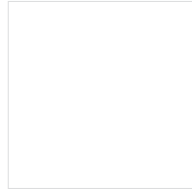
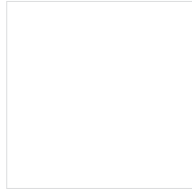
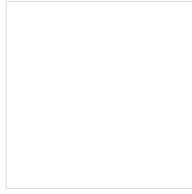
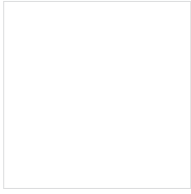
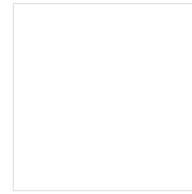
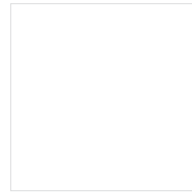
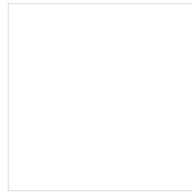
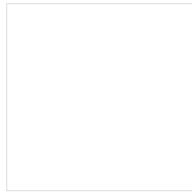
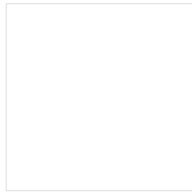
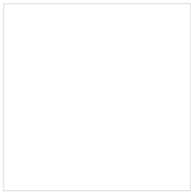
affect national law', but whether this is the case or not you can only find out by looking into that particular issue, trying to bring cases from different countries together and talking to judges or administrators or

“The written law might say, ‘These EU laws do not affect national law’”

market participants. Only then you can get a fuller picture,” Micklitz says. In order to test the hypothesis of an emerging self-sufficient or self-standing European private law the research team is conducting empirical research. The sociologist Thomas Roethe joined the team as part-time professor to support the collection and evaluation of the empirical data, undertaken in the team.

In order to gather a regular outsider view on the project development the so called ‘Scientific Advisory





“The regular external review is crucial for the project”

Committee, which assembles eminent scholars in European private law and governance, already met twice since the start of the project. It is composed of Norbert Reich (University of Bremen), Steven Weatherill (University of Oxford), Jonathan Zeitlin (University of Amsterdam) and Fernando Gomez (Pompeu Fabra University in Barcelona). The four-strong committee was created to give critical feedback on the project’s progress. “The regular external review is crucial for the project”, says Prof. Micklitz.

The ERC-ERPL project has organised several workshops and conferences in the past which can all be found on the project blog.

These are the major upcoming events:

- Together with Professors Carla Sieburgh and Arthur Hartkamp, a workshop will be held in September 2013 which discusses the impact of primary community law, the four freedoms, competition law, property rights and state subsidies on private law. A follow-up conference in spring in Nijmegen will round up the envisaged publication.
- On the 14-16 November 2013 a conference will be organised on the impact of the economic crisis on the over-indebtedness of consumers. This allows to deepen the understanding of the often discussed inclusion/exclusion paradigm in the European Union.

From September 2013 onwards a new research section will deal with the regulation of financial markets and the impact on private law. Annika Wolf, incoming Max Weber Fellow, Mads Andenas, Professor at the University of Oslo and Heikki Marjosola, PhD researcher at the University of Helsinki, will all complement the team.

Hans – W. Micklitz & Beate Hintzen on behalf of the ERPL Team



Professor Hans-W. Micklitz

